

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7418

DATE COMPLAINT FILED: June 21, 2018

DATE OF NOTIFICATION: June 27, 2018

LAST RESPONSE RECEIVED: January 3, 2019

DATE ACTIVATED: Oct. 12, 2018

EXPIRATION OF SOL: March 31, 2023 (earliest)

October 3, 2023 (latest)

ELECTION CYCLE: 2018

COMPLAINANT:

Dennis Olson

RESPONDENT:

Fuse Washington

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104

52 U.S.C. § 30120(a)

11 C.F.R. § 100.155(b)

11 C.F.R. § 109.10(b)

11 C.F.R. § 110.11(a)(1)

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Complaint alleges that Fuse Washington ("Fuse" or "Respondent"), a group the Complaint claims was spending and fundraising "for an explicitly partisan purpose" in Washington State's Fifth and Eighth Congressional Districts in 2018, failed to register and report as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint further alleges that certain Fuse website materials did not include the required disclaimers, and that an "extremely partisan" Facebook advertisement should have been disclosed by Fuse. As set forth below, although Fuse appears to have met the statutory threshold for political committee status, the available information does not indicate that Fuse's major

1 purpose was the nomination or election of a federal candidate. Accordingly, we recommend that
2 the Commission dismiss the allegations that Fuse violated the Act by failing to register and report
3 as a political committee. Because the disclaimer allegation is premised on the idea that Fuse is a
4 political committee, we also recommend that the Commission dismiss the allegation that
5 Respondent failed to include a disclaimer on its website. Finally, the available information
6 indicates that Fuse may have failed to file one or more independent expenditure reports, but
7 given the modest cost of Fuse's communications, we recommend that the Commission dismiss
8 this particular allegation consistent with the Commission's prosecutorial discretion to determine
9 the proper ordering of its priorities and use of agency resources.¹

10 II. FACTS

11 Fuse describes itself as a Washington State nonprofit organization that "mobilizes
12 grassroots activists online and offline and builds councils of local leaders."² According to its
13 website, Fuse was founded in 2007 "to help change the political landscape in Washington
14 State."³ In answering one of the frequently asked questions about "Where does Fuse work,"

15 Respondent states that

16
17 Fuse is a Washington state focused organization. The current
18 landscape has caused us to increase our advocacy at the federal
19 level, however our main focus is advocating for progressive
20 reforms at the state and local level and building the progressive
21 movement here at home.⁴

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

² Fuse Resp. at 1 (July 23, 2018).

³ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>.

⁴ *Id.*

1 The Complaint alleges that Fuse has undertaken spending and fundraising for an
2 “explicitly partisan purpose,” yet has not registered or filed any reports with the Commission.⁵
3 It states that Fuse has engaged in fundraising and made election-related expenditures such as
4 spending money on polling, staffing, advertising, and other expenses, and cites as an example a
5 number of Facebook posts by a Fuse employee and by an allied group in Ellensburg,
6 Washington.⁶ The alleged partisan content included Facebook posts related to the Fifth and
7 Eighth Congressional Districts, which included pictures of people holding signs critical of
8 congressional candidate Dino Rossi.⁷ The Complaint also contends that Fuse has spent money
9 on Facebook advertisements, including one attacking Rossi.

10 The Complaint further alleges that Fuse hired a field organizer for the Eighth
11 Congressional District, a “strong indication that the intention of organizing is partisan, rather
12 than a general effort to register voters.”⁸ The Complaint includes a screen shot of the posting for
13 the position, which lists among the organizer’s job description and responsibilities “help[ing]
14 elect a progressive” and “monitor[ing] Dino Rossi’s campaign . . . and organiz[ing] creative
15 accountability efforts as appropriate,” with salary ranging from \$32,000 to \$35,000.⁹

⁵ Compl. at 2 (June 21, 2018).

⁶ *Id.* at 2-3.

⁷ *Id.* at 3-4.

⁸ *Id.* at 7-8.

⁹ *Id.*

1 Finally, the Complaint alleges that Fuse conducted polling or focus groups with voters regarding
2 the messaging for the attack ads against Rossi, and notes that Fuse has no disclaimer or other
3 FEC committee name attached to its spending on its website.¹⁰

4 In response, Fuse argues that the Complaint relies on posts and comments on the
5 "Ellensburg Indivisible" and "Indivisible Wenatchee" Facebook pages, groups that share
6 common political perspectives but are not Fuse-controlled or affiliated with the Respondent.¹¹
7 With respect to whether Fuse's posting on its Facebook page of photographs of citizens dressed
8 in costumes demonstrates a "partisan intent," Fuse asserts that such activity does not trigger any
9 sort of reporting requirement.¹² Fuse also states that it has not engaged in any polling.¹³

10 Regarding Fuse's Facebook advertisement critical of Dino Rossi, Fuse acknowledges that
11 this ad and others may be express advocacy communications resulting in the making of
12 independent expenditures that met the \$250 reporting threshold for persons who are not political
13 committees,¹⁴ but argues that the "scope of the independent expenditures is quite small."¹⁵ Fuse
14 estimates that the total amount at issue is \$2,000 – \$900 in the Fifth District and \$1,100 in the
15 Eighth District, although it was still working to confirm the exact figure.¹⁶ It stated that it would

¹⁰ *Id.* at 9, 11.

¹¹ Fuse Resp. at 2. Another entity, Indivisible Washington, appears briefly in the Complaint on a Facebook page containing a post by Fuse's Eighth Congressional District field organizer. Indivisible Washington is a respondent in MUR 7417, although the available information does not indicate an overlap between that matter and MUR 7418.

¹² *Id.*

¹³ *Id.*

¹⁴ *See id.* at 3; 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

¹⁵ Fuse Resp. at 3.

¹⁶ *Id.*

1 “file reports with the FEC to reflect any independent expenditures.”¹⁷ Fuse also stated that a
2 reoccurrence was unlikely, given that it has undertaken training with staff on identifying
3 reportable independent expenditures.¹⁸

4 Fuse also argues that the allegation related to its hiring a Congressional District field
5 organizer does not support any finding of a violation. Fuse maintains that “[m]onitoring public
6 figures’ actions is not a reportable activity, and a position clearly created to organize and support
7 GOTV programs and efforts . . . to support a grass-roots organizing effort . . . is similarly not a
8 reportable expenditure.”¹⁹

9 After Fuse responded in this matter, it filed a series of 24-Hour Notices of
10 Disbursements/Obligations for Electioneering Communications disclosing communications
11 relating to Fifth and Eighth Congressional District candidates in amounts totaling \$1,989.74.²⁰
12 Among the disbursements are Facebook advertisements disclosed as opposing Rossi and
13 supporting his opponent in the Eight District and opposing incumbent Rep. Cathy McMorris
14 Rogers and supporting her opponent in the Fifth District.²¹ Fuse disclosed additional

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fuse Supplemental Response (Jan. 3, 2019).

²⁰ See 24-Hour Notices of Disbursements/Obligations for Electioneering Communications ((Aug. 9, 2018), (Aug. 10, 2018), (Aug. 11, 2018), (Sept. 10, 2018), (Sept. 21, 2018), (Sept. 26, 2018), and (Oct. 3, 2018)).

²¹ See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 21, 2018) at 3 (“Digital Ad/Oppose” Rossi; “Digital Ad/Support” Kim Schrier); 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Aug. 9, 2018) at 4 (“Digital Advertising/Oppose” Rogers; “Digital Advertising/Support” Lisa Brown).

1 disbursements totaling \$626.88 for electioneering communications ("ECs") supporting or
2 opposing eight other candidates in several other Congressional Districts in Washington State.²²
3 In sum, Fuse disclosed spending a total of \$2,616.62 in ECs supporting or opposing 12 federal
4 candidates.²³

5 III. LEGAL ANALYSIS

6 A. Political Committee Status

7 The Act defines a political committee as "any committee, club, association, or other
8 group of persons" that receives aggregate contributions or makes aggregate expenditures in
9 excess of \$1,000 during a calendar year.²⁴ Notwithstanding the threshold for contributions and
10 expenditures, an organization will be considered a political committee only if its "major purpose
11 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."²⁵ Political
12 committees are required to register with the Commission, comply with organizational and
13 recordkeeping requirements, and file periodic disclosure reports.²⁶

14 The available information indicates that Fuse likely crossed the statutory threshold for
15 political committee status by making more than \$1,000 in expenditures during 2018. An
16 "expenditure" is defined as "any purchase, payment, distribution, loan, advance, deposit, or gift
17 of money or anything of value made by any person for the purpose of influencing any election for

²² See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 26, 2018) at 4-6; 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Oct. 3, 2018) at 3.

²³ *Id.*

²⁴ 52 U.S.C. § 30101(4)(A).

²⁵ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("PC Status E&J"); see *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

²⁶ See 52 U.S.C. §§ 30102, 30103, 30104.

1 Federal office.”²⁷ Fuse acknowledges that it may have spent \$2,000 on express advocacy
2 communications comprising independent expenditures.²⁸ For example, Fuse’s Facebook
3 advertisement of a picture of Rossi titled “The Loser” and stating “Dino Rossi is running for
4 office again. Don’t let him win,” expressly advocates Rossi’s defeat and appears to be an
5 independent expenditure.²⁹ The record does not include, however, the amount Fuse spent on the
6 Rossi ad, nor information as to other communications.³⁰

7 Even if Fuse did not make more than \$1,000 in independent expenditures, however, its
8 spending on the salary of its Eighth Congressional District field organizer probably comprises
9 more than \$1,000 in federal expenditures. Although Fuse identifies certain tasks of the
10 organizer—monitoring public figures’ actions, organizing and supporting GOTV programs and
11 efforts, and supporting a grass-roots organizing effort—that it asserts are “not [] reportable
12 activit[ies],” Fuse’s own description of the position—“using innovative strategies to elect a
13 progressive in the 8th Congressional District this year”—suggests that at least a portion of Fuse’s
14 salary payments to the organizer were for the purpose of influencing elections for Federal

²⁷ 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

²⁸ Resp. at 3.

²⁹ See 11 C.F.R. § 100.22(a) (examples of expressly advocating include “‘defeat’ accompanied by a picture of one or more candidate(s)”; 52 U.S.C. § 30101(17) (“independent expenditure” defined as expressly advocating the election or defeat of a clearly-identified candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents).

³⁰ Nor do we have the text of the various Facebook advertisements Fuse later disclosed as ECs and described as supporting or opposing federal candidates. To the extent Fuse’s communications expressly advocated the election or defeat of federal candidates, they are not ECs as defined in the Act. See 52 U.S.C. § 30104(f)(3)(B)(ii) (“electioneering communication” does not include a communication that constitutes an expenditure or an independent expenditure under the Act). See also 11 C.F.R. § 100.29(c)(3). More broadly, Fuse’s communications do not appear to be ECs under the Act because they are not broadcast, cable or satellite communications. See 52 U.S.C. § 30104(f)(3)(i); 11 C.F.R. § 100.29(a). Nor did Fuse’s disclosed spending on the communications reach the EC \$10,000 reporting threshold. See 52 U.S.C. § 30104(f)(1); 11 C.F.R. § 104.20(b).

1 office.³¹ Accordingly, Fuse appears to meet the statutory threshold for political committee
2 status.³²

3 The available record, however, fails to give rise to a reasonable inference that Fuse meets
4 the major purpose component of the political committee analysis. The Commission has
5 explained that, in order to determine an entity's "major purpose," the Commission considers a
6 group's "overall conduct," including public statements about its mission, organizational
7 documents, government filings (*e.g.*, IRS notices), the proportion of spending related to "federal
8 campaign activity," and the extent to which fundraising solicitations indicate funds raised will be
9 used to support or oppose specific candidates.³³ In assessing an organization's major purpose,
10 the Commission has previously considered how much of an organization's spending is for
11 "federal campaign activity" as compared to "activities that [a]re not campaign related."³⁴

12 Here, Fuse's statements regarding its mission on its website and other social media
13 indicate that much of its activity is not federal campaign activity; rather, it focuses on state and
14 local candidates, climate change issues affecting the state of Washington; racial justice, local
15 activism, state worker issues, and tax reform on the state level.³⁵ On the other hand, Fuse
16 acknowledged that the "current landscape" caused it to increase its advocacy at the federal

³¹ See 52 U.S.C. § 30101(9)(B)(ii). Moreover, Fuse's payments for GOTV are only exempted from the definition of "expenditure" if they are nonpartisan, which Fuse does not claim. See 52 U.S.C. § 30101(9)(B)(ii), 11 C.F.R. § 100.133.

³² See 52 U.S.C. § 30101(4)(A).

³³ PC Status E&J at 5595, 5605.

³⁴ *Id.*

³⁵ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>. See also @FuseWashington, FACEBOOK, <https://www.facebook.com/FuseWashington>; @FuseWA, TWITTER, <https://twitter.com/fusewa>; and fusewa, INSTAGRAM, <https://www.instagram.com/fusewa>.

1 level,³⁶ and its hiring of a full-time organizer specifically tasked to “help elect a progressive” in
2 the Eighth Congressional District, coupled with its spending on express advocacy
3 communications, constitutes federal campaign activity. Nevertheless, even counting Fuse’s
4 acknowledged \$2,000 in independent expenditures and the entire salary paid to Fuse’s district
5 organizer as a federal expenditure, the total of Fuse’s federal campaign activity is less than
6 \$40,000.³⁷ While the available record does not indicate Fuse’s overall spending in 2018, Fuse’s
7 currently available Form 990 tax returns covering 2015 and 2016 activity reflect spending
8 \$480,748 and \$586,484, respectively.³⁸ Available information further indicates that Fuse’s
9 activity levels and staffing have at least remained steady. Its Instagram posts from 2016, 2018,
10 and the present suggest the same general level of activity over time.³⁹ And Fuse appears to have
11 operated with 14 staff in 2016, 15 staff in late 2017, and 19 staff today, suggesting that its overall
12 spending has not varied greatly in recent years.⁴⁰ Under these circumstances, the available
13 information does not support a reasonable inference that Fuse has as its major purpose the
14 nomination or election of federal candidates. Accordingly, we recommend that the Commission
15 dismiss the allegations that Fuse failed to register and report as a political committee in violation
16 of 52 U.S.C. §§ 30102, 30103, and 30104(a).

³⁶ See About Fuse, available at <https://www.fusewashington.org/about-Fuse>.

³⁷ In contrast with other matters, see, e.g., *Citizens for Responsibility and Ethics in Washington v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018), whether Fuse’s spending on communications that it disclosed as ECs is included in the major purpose calculation would not affect the outcome of the spending test and thus need not be determined here.

³⁸ See Fuse, Forms 990 at 1 and corresponding Statements of Functional Expenses (2015 and 2016).

³⁹ See fusewa, INSTAGRAM, <https://www.instagram.com/fusewa>.

⁴⁰ See <https://web.archive.org/web/20160528231204/http://fusewashington.org/about/staff.html> (2016); <https://web.archive.org/web/20171101061221/https://fusewashington.org/about/#staff> (2017); <https://fusewashington.org/about-fuse> (current). And Fuse’s Instagram posts from 2016, 2018 and the present suggest the same general level of activity over time.

1 B. Disclaimer

2 All Internet websites of political committees available to the general public are required
3 to include a disclaimer.⁴¹ Because there is an insufficient basis to find reason to believe that
4 Fuse met the statutory definition of political committee, we also recommend that the
5 Commission dismiss the allegation that Respondent violated 52 U.S.C. § 30120(a) by failing to
6 include a disclaimer on its website, consistent with the foregoing analysis regarding the political
7 committee status allegations.

8 C. Independent Expenditure Reporting

9 The Act requires persons, other than political committees, who make independent
10 expenditures that exceed \$250 during a calendar year to file a report disclosing information about
11 those expenditures.⁴²

12 Fuse acknowledges in its Response that it may have failed to file independent expenditure
13 reports, including for the Rossi Facebook ad, and stated that it intended to disclose independent
14 expenditures in the future.⁴³ But Fuse's subsequent EC reporting, which describes its Facebook
15 advertisements as supporting or opposing federal candidates, and does not match the
16 characteristics of ECs because the advertisements did not constitute broadcast, cable or satellite
17 communications, and the costs did not reach the EC \$10,000 reporting threshold, raises the
18 question whether the spending on those communications should have been disclosed as
19 independent expenditures. Nevertheless, given Fuse's apparent modest spending on its

⁴¹ 11 C.F.R. § 110.11(a)(1); 52 U.S.C. § 30120(a).

⁴² 52 U.S.C. § 30104(c)(1); 11 C.F.R. § 109.10(b).

⁴³ Fuse Resp. at 3. At the time the Complaint was submitted Facebook metrics reflected that there were between 10,000 to 50,000 people who viewed the advertisement and it cost less than \$999 to post. See Compl. at 2; attachment.

1 communications, we recommend that the Commission exercise its prosecutorial discretion under
2 *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismiss the allegation that Fuse failed to disclose
3 independent expenditures in violation of 52 U.S.C. § 30104(c).⁴⁴ We also recommend that the
4 Commission close the file in this matter.

5 **IV. RECOMMENDATIONS**

- 6 1. Dismiss the allegations that Fuse Washington violated 52 U.S.C. §§ 30102, 30103,
7 30104(a), and 30120(a);
- 8 2. Dismiss the allegation that Fuse Washington violated 52 U.S.C. § 30104(c) pursuant
9 to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821,
10 831-32 (1985);
- 11 3. Approve the attached Factual and Legal Analysis;
- 12 4. Approve the appropriate letters; and
- 13
- 14

⁴⁴ In view of Fuse's EC reporting, the Reports Analysis Division and the Information Division will offer Fuse the opportunity to participate in an FEC Connect webinar to ensure that Fuse will be better equipped to handle its reporting responsibilities if it decides to engage in future federally reportable activity.

5. Close the file.

Lisa J. Stevenson
Acting General Counsel

March 21, 2019

Date

Charles Kitcher

Charles Kitcher
Acting Associate General Counsel for
Enforcement

Mark Allen

Mark Allen
Assistant General Counsel

Roy Q. Lockett

Roy Q. Lockett
Attorney

Attachment:

Factual and Legal Analysis

100474000740

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**

4 **RESPONDENT:** Fuse Washington MUR 7418
5

6
7 **I. INTRODUCTION**

8 The Complaint alleges that Fuse Washington ("Fuse" or "Respondent"), a group the
9 Complaint claims was spending and fundraising "for an explicitly partisan purpose" in
10 Washington State's Fifth and Eighth Congressional Districts in 2018, failed to register and report
11 as a political committee in violation of the Federal Election Campaign Act of 1971, as amended
12 (the "Act"). The Complaint further alleges that certain Fuse website materials did not include
13 the required disclaimers, and that an "extremely partisan" Facebook advertisement should have
14 been disclosed by Fuse. As set forth below, although Fuse appears to have met the statutory
15 threshold for political committee status, the available information does not indicate that Fuse's
16 major purpose was the nomination or election of a federal candidate. Accordingly, the
17 Commission has determined to dismiss the allegations that Fuse violated the Act by failing to
18 register and report as a political committee. Because the disclaimer allegation is premised on the
19 idea that Fuse is a political committee, the Commission has also determined to dismiss the
20 allegation that Respondent failed to include a disclaimer on its website. Finally, the available
21 information indicates that Fuse may have failed to file one or more independent expenditure
22 reports, but given the modest cost of Fuse's communications, the Commission has further
23 determined to dismiss this particular allegation consistent with the Commission's prosecutorial
24 discretion to determine the proper ordering of its priorities and use of agency resources.¹

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Fuse describes itself as a Washington State nonprofit organization that “mobilizes grassroots activists online and offline and builds councils of local leaders.”² According to its website, Fuse was founded in 2007 “to help change the political landscape in Washington State.”³ In answering one of the frequently asked questions about “Where does Fuse work,”

Respondent states that

Fuse is a Washington state focused organization. The current landscape has caused us to increase our advocacy at the federal level, however our main focus is advocating for progressive reforms at the state and local level and building the progressive movement here at home.⁴

The Complaint alleges that Fuse has undertaken spending and fundraising for an “explicitly partisan purpose,” yet has not registered or filed any reports with the Commission.⁵ It states that Fuse has engaged in fundraising and made election-related expenditures such as spending money on polling, staffing, advertising, and other expenses, and cites as an example a number of Facebook posts by a Fuse employee and by an allied group in Ellensburg, Washington.⁶ The alleged partisan content included Facebook posts related to the Fifth and Eighth Congressional Districts, which included pictures of people holding signs critical of

² Fuse Resp. at 1 (July 23, 2018).

³ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>.

⁴ *Id.*

⁵ Compl. at 2 (June 21, 2018).

⁶ *Id.* at 2-3.

1 congressional candidate Dino Rossi.⁷ The Complaint also contends that Fuse has spent money
2 on Facebook advertisements, including one attacking Rossi.

3 The Complaint further alleges that Fuse hired a field organizer for the Eighth
4 Congressional District, a “strong indication that the intention of organizing is partisan, rather
5 than a general effort to register voters.”⁸ The Complaint includes a screen shot of the posting for
6 the position, which lists among the organizer’s job description and responsibilities “help[ing]
7 elect a progressive” and “monitor[ing] Dino Rossi’s campaign . . . and organiz[ing] creative
8 accountability efforts as appropriate,” with salary ranging from \$32,000 to \$35,000.⁹
9 Finally, the Complaint alleges that Fuse conducted polling or focus groups with voters regarding
10 the messaging for the attack ads against Rossi, and notes that Fuse has no disclaimer or other
11 FEC committee name attached to its spending on its website.¹⁰

12 In response, Fuse argues that the Complaint relies on posts and comments on the
13 “Ellensburg Indivisible” and “Indivisible Wenatchee” Facebook pages, groups that share
14 common political perspectives but are not Fuse-controlled or affiliated with the Respondent.¹¹
15 With respect to whether Fuse’s posting on its Facebook page of photographs of citizens dressed
16 in costumes demonstrates a “partisan intent,” Fuse asserts that such activity does not trigger any
17 sort of reporting requirement.¹² Fuse also states that it has not engaged in any polling.¹³

⁷ *Id.* at 3-4.

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1 Regarding Fuse's Facebook advertisement critical of Dino Rossi, Fuse acknowledges that
2 this ad and others may be express advocacy communications resulting in the making of
3 independent expenditures that met the \$250 reporting threshold for persons who are not political
4 committees,¹⁴ but argues that the "scope of the independent expenditures is quite small."¹⁵ Fuse
5 estimates that the total amount at issue is \$2,000 – \$900 in the Fifth District and \$1,100 in the
6 Eighth District, although it was still working to confirm the exact figure.¹⁶ It stated that it would
7 "file reports with the FEC to reflect any independent expenditures."¹⁷ Fuse also stated that a
8 reoccurrence was unlikely, given that it has undertaken training with staff on identifying
9 reportable independent expenditures.¹⁸

10 Fuse also argues that the allegation related to its hiring a Congressional District field
11 organizer does not support any finding of a violation. Fuse maintains that "[m]onitoring public
12 figures' actions is not a reportable activity, and a position clearly created to organize and support
13 GOTV programs and efforts . . . to support a grass-roots organizing effort . . . is similarly not a
14 reportable expenditure."¹⁹

15 After Fuse responded in this matter, it filed a series of 24-Hour Notices of
16 Disbursements/Obligations for Electioneering Communications disclosing communications

¹⁴ See *id.* at 3; 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

¹⁵ Fuse Resp. at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fuse Supplemental Response (Jan. 3, 2019).

1 relating to Fifth and Eighth Congressional District candidates in amounts totaling \$1,989.74.²⁰
2 Among the disbursements are Facebook advertisements disclosed as opposing Rossi and
3 supporting his opponent in the Eight District and opposing incumbent Rep. Cathy McMorris
4 Rogers and supporting her opponent in the Fifth District.²¹ Fuse disclosed additional
5 disbursements totaling \$626.88 for electioneering communications (“ECs”) supporting or
6 opposing eight other candidates in several other Congressional Districts in Washington State.²²
7 In sum, Fuse disclosed spending a total of \$2,616.62 in ECs supporting or opposing 12 federal
8 candidates.²³

9 **B. Legal Analysis**

10 1. Political Committee Status

11 The Act defines a political committee as “any committee, club, association, or other
12 group of persons” that receives aggregate contributions or makes aggregate expenditures in
13 excess of \$1,000 during a calendar year.²⁴ Notwithstanding the threshold for contributions and
14 expenditures, an organization will be considered a political committee only if its “major purpose

²⁰ See 24-Hour Notices of Disbursements/Obligations for Electioneering Communications ((Aug. 9, 2018), (Aug. 10, 2018), (Aug. 11, 2018), (Sept. 10, 2018), (Sept. 21, 2018), (Sept. 26, 2018), and (Oct. 3, 2018)).

²¹ See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 21, 2018) at 3 (“Digital Ad/Oppose” Rossi; “Digital Ad/Support” Kim Schrier); 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Aug. 9, 2018) at 4 (“Digital Advertising/Oppose” Rogers; “Digital Advertising/Support” Lisa Brown).

²² See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 26, 2018) at 4-6; 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Oct. 3, 2018) at 3.

²³ *Id.*

²⁴ 52 U.S.C. § 30101(4)(A).

1 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).²⁵ Political
2 committees are required to register with the Commission, comply with organizational and
3 recordkeeping requirements, and file periodic disclosure reports.²⁶

4 The available information indicates that Fuse likely crossed the statutory threshold for
5 political committee status by making more than \$1,000 in expenditures during 2018. An
6 “expenditure” is defined as “any purchase, payment, distribution, loan, advance, deposit, or gift
7 of money or anything of value made by any person for the purpose of influencing any election
8 for Federal office.”²⁷ Fuse acknowledges that it may have spent \$2,000 on express advocacy
9 communications comprising independent expenditures.²⁸ For example, Fuse’s Facebook
10 advertisement of a picture of Rossi titled “The Loser” and stating “Dino Rossi is running for
11 office again. Don’t let him win,” expressly advocates Rossi’s defeat and appears to be an
12 independent expenditure.²⁹ The record does not include, however, the amount Fuse spent on the

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²⁶ *See* 52 U.S.C. §§ 30102, 30103, 30104.

²⁷ 52 U.S.C. § 30101(9)(A)(i); 11 C.F.R. § 100.111.

²⁸ Resp. at 3.

²⁹ *See* 11 C.F.R. § 100.22(a) (examples of expressly advocating include “‘defeat’ accompanied by a picture of one or more candidate(s)”; 52 U.S.C. § 30101(17) (“independent expenditure” defined as expressly advocating the election or defeat of a clearly-identified candidate that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents).

1 Rossi ad, nor information as to other communications.³⁰

2 Even if Fuse did not make more than \$1,000 in independent expenditures, however, its
3 spending on the salary of its Eighth Congressional District field organizer probably comprises
4 more than \$1,000 in federal expenditures. Although Fuse identifies certain tasks of the
5 organizer—monitoring public figures’ actions, organizing and supporting GOTV programs and
6 efforts, and supporting a grass-roots organizing effort—that it asserts are “not [] reportable
7 activit[ies],” Fuse’s own description of the position—“using innovative strategies to elect a
8 progressive in the 8th Congressional District this year”—suggests that at least a portion of Fuse’s
9 salary payments to the organizer were for the purpose of influencing elections for Federal
10 office.³¹ Accordingly, Fuse appears to meet the statutory threshold for political committee
11 status.³²

12 The available record, however, fails to give rise to a reasonable inference that Fuse meets
13 the major purpose component of the political committee analysis. The Commission has
14 explained that, in order to determine an entity’s “major purpose,” the Commission considers a
15 group’s “overall conduct,” including public statements about its mission, organizational
16 documents, government filings (*e.g.*, IRS notices), the proportion of spending related to “federal

³⁰ Nor does the Commission possess the text of the various Facebook advertisements Fuse later disclosed as ECs and described as supporting or opposing federal candidates. To the extent Fuse’s communications expressly advocated the election or defeat of federal candidates, they are not ECs as defined in the Act. *See* 52 U.S.C. § 30104(f)(3)(B)(ii) (“electioneering communication” does not include a communication that constitutes an expenditure or an independent expenditure under the Act). *See also* 11 C.F.R. § 100.29(c)(3). More broadly, Fuse’s communications do not appear to be ECs under the Act because they are not broadcast, cable or satellite communications. *See* 52 U.S.C. § 30104(f)(3)(i); 11 C.F.R. § 100.29(a). Nor did Fuse’s disclosed spending on the communications reach the EC \$10,000 reporting threshold. *See* 52 U.S.C. § 30104(f)(1); 11 C.F.R. § 104.20(b).

³¹ *See* 52 U.S.C. § 30101(9)(B)(ii). Moreover, Fuse’s payments for GOTV are only exempted from the definition of “expenditure” if they are nonpartisan, which Fuse does not claim. *See* 52 U.S.C. § 30101(9)(B)(ii), 11 C.F.R. § 100.133.

³² *See* 52 U.S.C. § 30101(4)(A).

1 campaign activity,” and the extent to which fundraising solicitations indicate funds raised will be
2 used to support or oppose specific candidates.³³ In assessing an organization’s major purpose,
3 the Commission has previously considered how much of an organization’s spending is for
4 “federal campaign activity” as compared to “activities that [a]re not campaign related.”³⁴

5 Here, Fuse’s statements regarding its mission on its website and other social media
6 indicate that much of its activity is not federal campaign activity; rather, it focuses on state and
7 local candidates, climate change issues affecting the state of Washington, racial justice, local
8 activism, state worker issues, and tax reform on the state level.³⁵ On the other hand, Fuse
9 acknowledged that the “current landscape” caused it to increase its advocacy at the federal
10 level,³⁶ and its hiring of a full-time organizer specifically tasked to “help elect a progressive” in
11 the Eighth Congressional District, coupled with its spending on express advocacy
12 communications, constitutes federal campaign activity. Nevertheless, even counting Fuse’s
13 acknowledged \$2,000 in independent expenditures and the entire salary paid to Fuse’s district
14 organizer as a federal expenditure, the total of Fuse’s federal campaign activity is less than
15 \$40,000.³⁷ While the available record does not indicate Fuse’s overall spending in 2018, Fuse’s
16 currently available Form 990 tax returns covering 2015 and 2016 activity reflect spending

³³ PC Status E&J at 5595, 5605.

³⁴ *Id.*

³⁵ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>. See also @FuseWashington, FACEBOOK, <https://www.facebook.com/FuseWashington>; @FuseWA, TWITTER, <https://twitter.com/fusewa>; and fusewa, INSTAGRAM, <https://www.instagram.com/fusewa>.

³⁶ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>.

³⁷ In contrast with other matters, see, e.g., *Citizens for Responsibility and Ethics in Washington v. FEC*, 299 F. Supp. 3d 83 (D.D.C. 2018), whether Fuse’s spending on communications that it disclosed as ECs is included in the major purpose calculation would not affect the outcome of the spending test and thus need not be determined here.

1 \$480,748 and \$586,484, respectively.³⁸ Available information further indicates that Fuse's
2 activity levels and staffing have at least remained steady. Its Instagram posts from 2016, 2018,
3 and the present suggest the same general level of activity over time.³⁹ And Fuse appears to have
4 operated with 14 staff in 2016, 15 staff in late 2017, and 19 staff today, suggesting that its overall
5 spending has not varied greatly in recent years.⁴⁰ Under these circumstances, the available
6 information does not support a reasonable inference that Fuse has as its major purpose the
7 nomination or election of federal candidates. Accordingly, the Commission has determined to
8 dismiss the allegations that Fuse failed to register and report as a political committee in violation
9 of 52 U.S.C. §§ 30102, 30103, and 30104(a).

10 2. Disclaimer

11 All Internet websites of political committees available to the general public are required
12 to include a disclaimer.⁴¹ Because there is an insufficient basis to find reason to believe that
13 Fuse met the statutory definition of political committee, the Commission has determined to
14 dismiss the allegation that Respondent violated 52 U.S.C. § 30120(a) by failing to include a
15 disclaimer on its website, consistent with the foregoing analysis regarding the political
16 committee status allegations.

³⁸ See Fuse, Forms 990 at 1 and corresponding Statements of Functional Expenses (2015 and 2016).

³⁹ See fusewa, INSTAGRAM, <https://www.instagram.com/fusewa>.

⁴⁰ See <https://web.archive.org/web/20160528231204/http://fusewashington.org/about/staff.html> (2016); <https://web.archive.org/web/20171101061221/https://fusewashington.org/about/#staff> (2017); <https://fusewashington.org/about-fuse> (current). And Fuse's Instagram posts from 2016, 2018 and the present suggest the same general level of activity over time.

⁴¹ 11 C.F.R. § 110.11(a)(1); 52 U.S.C. § 30120(a).

3. Independent Expenditure Reporting

The Act requires persons, other than political committees, who make independent expenditures that exceed \$250 during a calendar year to file a report disclosing information about those expenditures.⁴²

Fuse acknowledges in its Response that it may have failed to file independent expenditure reports, including for the Rossi Facebook ad, and stated that it intended to disclose independent expenditures in the future.⁴³ But Fuse's subsequent EC reporting, which describes its Facebook advertisements as supporting or opposing federal candidates, and does not match the characteristics of ECs because the advertisements did not constitute broadcast, cable or satellite communications, and the costs did not reach the EC \$10,000 reporting threshold, raises the question whether the spending on those communications should have been disclosed as independent expenditures. Nevertheless, given Fuse's apparent modest spending on its communications, the Commission has determined to exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismiss the allegation that Fuse failed to disclose independent expenditures in violation of 52 U.S.C. § 30104(c).

⁴² 52 U.S.C. § 30104(c)(1); 11 C.F.R. § 109.10(b).

⁴³ Fuse Resp. at 3. At the time the Complaint was submitted Facebook metrics reflected that there were between 10,000 to 50,000 people who viewed the advertisement and it cost less than \$999 to post. See Compl. at 2; attachment.

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Fuse Washington MUR 7418

I. INTRODUCTION

The Complaint alleges that Fuse Washington ("Fuse" or "Respondent"), a group the Complaint claims was spending and fundraising "for an explicitly partisan purpose" in Washington State's Fifth and Eighth Congressional Districts in 2018, failed to register and report as a political committee in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). The Complaint further alleges that certain Fuse website materials did not include the required disclaimers, and that an "extremely partisan" Facebook advertisement should have been disclosed by Fuse. As set forth below, even if Fuse satisfied the statutory threshold for political committee status, the available information does not indicate that Fuse's major purpose was the nomination or election of a federal candidate. Accordingly, the Commission has determined to dismiss the allegations that Fuse violated the Act by failing to register and report as a political committee. Because the disclaimer allegation is premised on the idea that Fuse is a political committee, the Commission has also determined to dismiss the allegation that Respondent failed to include a disclaimer on its website. Finally, the available information indicates that Fuse may have failed to file one or more independent expenditure reports, but given the modest cost of Fuse's communications, the Commission has further determined to dismiss this particular allegation consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.¹

¹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Fuse describes itself as a Washington State nonprofit organization that “mobilizes grassroots activists online and offline and builds councils of local leaders.”² According to its website, Fuse was founded in 2007 “to help change the political landscape in Washington State.”³ In answering one of the frequently asked questions about “Where does Fuse work,”

Respondent states that

Fuse is a Washington state focused organization. The current landscape has caused us to increase our advocacy at the federal level, however our main focus is advocating for progressive reforms at the state and local level and building the progressive movement here at home.⁴

The Complaint alleges that Fuse has undertaken spending and fundraising for an “explicitly partisan purpose,” yet has not registered or filed any reports with the Commission.⁵ It states that Fuse has engaged in fundraising and made election-related expenditures such as spending money on polling, staffing, advertising, and other expenses, and cites as an example a number of Facebook posts by a Fuse employee and by an allied group in Ellensburg, Washington.⁶ The alleged partisan content included Facebook posts related to the Fifth and Eighth Congressional Districts, which included pictures of people holding signs critical of

² Fuse Resp. at 1 (July 23, 2018).

³ See About Fuse, available at <https://www.Fusewashington.org/about-Fuse>.

⁴ *Id.*

⁵ Compl. at 2 (June 21, 2018).

⁶ *Id.* at 2-3.

1 congressional candidate Dino Rossi.⁷ The Complaint also contends that Fuse has spent money
2 on Facebook advertisements, including one attacking Rossi.

3 The Complaint further alleges that Fuse hired a field organizer for the Eighth
4 Congressional District, a “strong indication that the intention of organizing is partisan, rather
5 than a general effort to register voters.”⁸ The Complaint includes a screen shot of the posting for
6 the position, which lists among the organizer’s job description and responsibilities “help[ing]
7 elect a progressive” and “monitor[ing] Dino Rossi’s campaign . . . and organiz[ing] creative
8 accountability efforts as appropriate,” with salary ranging from \$32,000 to \$35,000.⁹
9 Finally, the Complaint alleges that Fuse conducted polling or focus groups with voters regarding
10 the messaging for the attack ads against Rossi, and notes that Fuse has no disclaimer or other
11 FEC committee name attached to its spending on its website.¹⁰

12 In response, Fuse argues that the Complaint relies on posts and comments on the
13 “Ellensburg Indivisible” and “Indivisible Wenatchee” Facebook pages, groups that share
14 common political perspectives but are not Fuse-controlled or affiliated with the Respondent.¹¹
15 With respect to whether Fuse’s posting on its Facebook page of photographs of citizens dressed
16 in costumes demonstrates a “partisan intent,” Fuse asserts that such activity does not trigger any
17 sort of reporting requirement.¹² Fuse also states that it has not engaged in any polling.¹³

⁷ *Id.* at 3-4.

⁸ *Id.* at 7-8.

⁹ *Id.*

¹⁰ *Id.* at 9, 11.

¹¹ Fuse Resp. at 2.

¹² *Id.*

¹³ *Id.*

1 Regarding Fuse's Facebook advertisement critical of Dino Rossi, Fuse acknowledges that
2 this ad and others may be express advocacy communications resulting in the making of
3 independent expenditures that met the \$250 reporting threshold for persons who are not political
4 committees,¹⁴ but argues that the "scope of the independent expenditures is quite small."¹⁵ Fuse
5 estimates that the total amount at issue is \$2,000 – \$900 in the Fifth District and \$1,100 in the
6 Eighth District, although it was still working to confirm the exact figure.¹⁶ It stated that it would
7 "file reports with the FEC to reflect any independent expenditures."¹⁷ Fuse also stated that a
8 reoccurrence was unlikely, given that it has undertaken training with staff on identifying
9 reportable independent expenditures.¹⁸

10 Fuse also argues that the allegation related to its hiring a Congressional District field
11 organizer does not support any finding of a violation. Fuse maintains that "[m]onitoring public
12 figures' actions is not a reportable activity, and a position clearly created to organize and support
13 GOTV programs and efforts . . . to support a grass-roots organizing effort . . . is similarly not a
14 reportable expenditure."¹⁹

15 After Fuse responded in this matter, it filed a series of 24-Hour Notices of
16 Disbursements/Obligations for Electioneering Communications disclosing communications

¹⁴ See *id.* at 3; 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

¹⁵ Fuse Resp. at 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fuse Supplemental Response (Jan. 3, 2019).

1 relating to Fifth and Eighth Congressional District candidates in amounts totaling \$1,989.74.²⁰
2 Among the disbursements are Facebook advertisements disclosed as opposing Rossi and
3 supporting his opponent in the Eight District and opposing incumbent Rep. Cathy McMorris
4 Rogers and supporting her opponent in the Fifth District.²¹ Fuse disclosed additional
5 disbursements totaling \$626.88 for electioneering communications (“ECs”) supporting or
6 opposing eight other candidates in several other Congressional Districts in Washington State.²²
7 In sum, Fuse disclosed spending a total of \$2,616.62 in ECs supporting or opposing 12 federal
8 candidates.²³

9 **B. Legal Analysis**

10 **1. Political Committee Status**

11 The Act defines a political committee as “any committee, club, association, or other
12 group of persons” that receives aggregate contributions or makes aggregate expenditures in
13 excess of \$1,000 during a calendar year.²⁴ Notwithstanding the threshold for contributions and
14 expenditures, an organization will be considered a political committee only if its “major purpose

²⁰ See 24-Hour Notices of Disbursements/Obligations for Electioneering Communications ((Aug. 9, 2018), (Aug. 10, 2018), (Aug. 11, 2018), (Sept. 10, 2018), (Sept. 21, 2018), (Sept. 26, 2018), and (Oct. 3, 2018)).

²¹ See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 21, 2018) at 3 (“Digital Ad/Oppose” Rossi; “Digital Ad/Support” Kim Schrier); 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Aug. 9, 2018) at 4 (“Digital Advertising/Oppose” Rogers; “Digital Advertising/Support” Lisa Brown).

²² See, e.g., 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Sept. 26, 2018) at 4-6; 24-Hour Notice of Disbursements/Obligations for Electioneering Communications (Oct. 3, 2018) at 3.

²³ *Id.*

²⁴ 52 U.S.C. § 30101(4)(A).

1 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).²⁵ Political
2 committees are required to register with the Commission, comply with organizational and
3 recordkeeping requirements, and file periodic disclosure reports.²⁶

4 Even if Fuse satisfied the statutory threshold for political committee status, the record
5 does not establish reason to believe that Fuse meets the major purpose component of the political
6 committee analysis. The Commission has explained that, in order to determine an entity's
7 "major purpose," the Commission considers a group's "overall conduct," including public
8 statements about its mission, organizational documents, government filings (*e.g.*, IRS notices),
9 the proportion of spending related to "federal campaign activity," and the extent to which
10 fundraising solicitations indicate funds raised will be used to support or oppose specific
11 candidates.²⁷ In assessing an organization's major purpose, the Commission has previously
12 considered how much of an organization's spending is for "federal campaign activity" as
13 compared to "activities that [a]re not campaign related."²⁸

14 Here, Fuse's statements regarding its mission on its website indicate that much of its
15 activity is not federal campaign activity; rather, it focuses on state and local candidates, climate
16 change issues affecting the state of Washington, racial justice, local activism, state worker issues,

²⁵ Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) ("PC Status E&J"); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

²⁶ *See* 52 U.S.C. §§ 30102, 30103, 30104.

²⁷ PC Status E&J at 5595, 5605.

²⁸ *Id.*

1 and tax reform on the state level.²⁹ On the other hand, while Fuse acknowledged that the
2 “current landscape” caused it to increase its advocacy at the federal level, the record does not
3 establish reason to believe that Fuse meets the major purpose component of the political
4 committee analysis.³⁰ Accordingly, the Commission has determined to dismiss the allegations
5 that Fuse failed to register and report as a political committee in violation of 52 U.S.C. §§ 30102,
6 30103, and 30104(a).

7 2. Disclaimer

8 All Internet websites of political committees available to the general public are required
9 to include a disclaimer.³¹ Because there is an insufficient basis to find reason to believe that
10 Fuse met the statutory definition of political committee, the Commission has determined to
11 dismiss the allegation that Respondent violated 52 U.S.C. § 30120(a) by failing to include a
12 disclaimer on its website, consistent with the foregoing analysis regarding the political
13 committee status allegations.

²⁹ See About Fuse, *available at* <https://www.Fusewashington.org/about-Fuse>. See also @FuseWashington, FACEBOOK, <https://www.facebook.com/FuseWashington>; @FuseWA, TWITTER, <https://twitter.com/fusewa>; and fusewa, INSTAGRAM, <https://www.instagram.com/fusewa>.

³⁰ See About Fuse, *available at* <https://www.Fusewashington.org/about-Fuse>.

³¹ 11 C.F.R. § 110.11(a)(1); 52 U.S.C. § 30120(a).

1 3. Independent Expenditure Reporting

2 The Act requires persons, other than political committees, who make independent
3 expenditures that exceed \$250 during a calendar year to file a report disclosing information about
4 those expenditures.³²

5 Fuse acknowledges in its Response that it may have failed to file independent
6 expenditure reports, including for the Rossi Facebook ad, and stated that it intended to disclose
7 independent expenditures in the future.³³ But Fuse's subsequent EC reporting, which describes
8 its Facebook advertisements as supporting or opposing federal candidates, and does not match
9 the characteristics of ECs because the advertisements did not constitute broadcast, cable or
10 satellite communications, and the costs did not reach the EC \$10,000 reporting threshold, raises
11 the question whether the spending on those communications should have been disclosed as
12 independent expenditures. Nevertheless, given Fuse's apparent modest spending on its
13 communications, the Commission has determined to exercise its prosecutorial discretion under
14 *Heckler v. Chaney*, 470 U.S. 821 (1985) and dismiss the allegation that Fuse failed to disclose
15 independent expenditures in violation of 52 U.S.C. § 30104(c).

³² 52 U.S.C. § 30104(c)(1); 11 C.F.R. § 109.10(b).

³³ Fuse Resp. at 3. At the time the Complaint was submitted Facebook metrics reflected that there were between 10,000 to 50,000 people who viewed the advertisement and it cost less than \$999 to post. See Compl. at 2; attachment.